

J. C. v Central Vermont Hospital

(August 20, 2007)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

J. C.

Opinion No.: 23-07WC

v.

By: Jane Dimotsis, Hearing Officer
Codee McDaniel, Law Clerk

Central Vermont Hospital

For: Patricia Moutlon Powden
Commissioner

State File No.: C-18210

Hearing held on May 10, 2007

Record Closed on July 20, 2007

APPEARANCES:

Claimant, *Pro se*
John Valente, Esq., for the Defendant

ISSUES:

1. Whether Claimant's current medical regime is reasonable and necessary treatment for a work-related injury.

EXHIBITS:

1. Medical Records of Claimant
2. Pretrial disclosures which includes a letter from Dr. Lucy Patti
3. Curriculum Vitae of Dr. Philip Carling

FINDINGS OF FACT:

1. Claimant contracted Hepatitis A when she was approximately 20 years old and made a complete recovery with no residual symptoms.
2. In 1987, Claimant began working as an operating room nurse at Central Vermont Hospital. This was her occupation during all times relevant to the pending action.
3. In December 1989, Claimant alleges that she contracted Hepatitis C, presumably from a needle stick, while working as an operating room nurse at Central Vermont Hospital. There is no documentation of a needle stick in the medical records.
4. After reviewing lab test results of December 1989, Dr. Mark Yorra concluded in his March 27, 1990 report, that Claimant's symptoms (headaches, body aches, muscle

fatigue, low back pain, chronic diarrhea, loss of appetite, memory loss, and sleep deprivation) were consistent with acute Hepatitis.

5. Dr. Yorra attributed Claimant's symptoms to chronic fatigue syndrome related to her "job-acquired Hepatitis infection" on August 7, 1990.
6. However, approximately two months later, Dr. Yorra observed that Claimant was no longer symptomatic of Hepatitis because her liver enzyme levels were normal. He diagnosed Claimant with "residual fatigue syndrome," and opined that she could return to work on a part time basis.
7. On a referral from Dr. Yorra, Dr. Dieter Gump examined the Claimant on May 14, 1991 and noted a butterfly tattoo on her right shoulder. He speculated that the Claimant could have contracted Hepatitis from a tattoo needle. However, the exact date of when the Claimant acquired the butterfly tattoo is not indicated in the medical records.
8. Dr. Gump placed the Claimant at medical end result on June 11, 1991. Consequently, Dr. Gump added that he was without a medical explanation for why Claimant continued to complain of "undue fatigue" and why she was unable to work eight hours a day.
9. In 1991, Claimant became a patient of Dr. Anthony Komaroff, Brigham and Women's Hospital. During this time, Dr. Komaroff was conducting a research program on the cause of chronic fatigue immune dysfunction syndrome.
10. Dr. Komaroff reported that Claimant has a history of depression dating back to 1981 which was prior to her Hepatitis episode. He diagnosed Claimant with a "chronic debilitating condition following in the wake of an apparently non-A, non-B, non-C Hepatitis" and added that "she probably had an active depressive disorder at the time of her Hepatitis." Dr. Komaroff treated Claimant for three years and diagnosed her symptoms as post-infectious fatigue syndrome.
11. On March 8, 1995 Dr. Yorra's medical opinion was that Claimant did not have the capacity to return to employment as an operating room nurse. His prognosis was that Claimant remained totally disabled from her former occupation and he estimated that she had an 85% whole person impairment rating.
12. Dr. Dorothy Ford, Physical Medicine and Rehabilitation, disagreed with Dr. Yorra's impairment rating in belief that the rating was "extremely" high. Rather, she opined that an 85% whole person impairment rating was equal to the rating for quadriplegics and greater than the rating for all but the most severe head injuries.
13. On July 11, 1995 Dr. Ford evaluated the Claimant. She based the Claimant's impairment rating on an endurance test because chronic fatigue syndrome was not addressed by the AMA Guides. She assigned a 40% whole person impairment rating and placed the Claimant at medical end result.

14. A functional capacity examination of the Claimant was performed by Marge Lavoie Skroski, Green Mountain Industrial Rehabilitation, on June 22, 2005. Ms. Skroski concluded that Claimant had a less than sedentary work capacity.
15. Dr. Christopher Matkovic, Diplomate of American Board of Internal Medicine and Infectious Disease, examined the Claimant on February 28, 2006. From this examination, he concluded that Claimant “truly has ongoing fatigue” but that it was not causally related to the Hepatitis episode that occurred eighteen years ago. Dr. Matkovic rejected any theory of possible causation because he believes that there is no association between Hepatitis and chronic fatigue syndrome. He reasoned that there was no medical evidence to support that Claimant’s symptoms were “chronic” in nature or evidence of a needle stick which could explain the 1989 Hepatitis episode. According to Dr. Matkovic, approximately 95% of needle sticks are associated with Hepatitis B and C; and since neither was detected in Claimant’s medical tests, he was not convinced that Claimant’s acute Hepatitis was even job-related.
16. Dr. Philip C. Carling, Caritas Carney Hospital, specializes in infectious diseases. His March 31, 2007 report also indicated disagreement with Dr. Yorra’s diagnosis of chronic fatigue syndrome. Dr. Carling ruminated that Dr. Yorra failed to rule out other bases for Claimant’s symptomatology. He concluded that Claimant’s 1989 episode of Hepatitis was not causally related to her employment. Dr. Carling brought to light that there are many different causes of Hepatitis because it is a very general term used to describe inflammation of the liver.
17. On May 10, 2007 Dr. Carling testified that chronic fatigue syndrome was in no way associated with Hepatitis. He explained that the “constellation” of symptoms (low grade fevers, inability to achieve adequate amounts of rest, mental status changes, cognitive problems, and sore throats) associated with chronic fatigue syndrome usually subside within four to six years. Dr. Carling speculated that it is very controversial for symptoms of chronic fatigue syndrome to persist longer than for these periods of time. His testimony also reflected concern that there is no specific treatment for chronic fatigue syndrome; that Dr. Yorra was a general internist at the time he made the chronic fatigue syndrome diagnosis; and that Dr. Yorra failed to rule out other potential explanations for Claimant’s symptoms.
18. Dr. Lucy Patti, Associates in Family Health, is Claimant’s current treating physician. Dr. Patti agreed with Dr. Komaroff’s chronic fatigue syndrome diagnosis and is supervising Claimant’s treatment regime for symptoms of this condition.
19. Claimant has been unemployed since 1990 (seventeen years) and testified that she spends most of her time resting.
20. Claimant’s current treatment regime includes the following medications: Zoloft, Prolosec, Raglan, Transadone, Ambien; with intermittent use of Zocor and Toprol. These medications were all prescribed to treat Claimant’s symptoms of insomnia, digestive problems, depression, short term memory loss, muscular aches and joint pain, and fatigue.

CONCLUSIONS OF LAW:

1. Ultimately, the burden of proof rests upon the Claimant who must prove all facts essential to the rights asserted in Workers' Compensation cases. *Goodwin v. Fairbanks, Morse and Co.*, 123 Vt. 161 (1963). The Claimant is also required to establish the character and extent of their injury as well as the causal connection between the injury and the employment by a demonstration of sufficient credible evidence. *Egbert v. The Book Press*, 144 Vt. 367 (1984).
2. The Claimant has not satisfied her burden of proof because she has not convinced the Department that her symptoms, arguably consistent with chronic fatigue syndrome, are causally related to her 1989 Hepatitis episode or related to her employment. Credible experts, namely Dr. Carling, Dr. Matkovic, and Dr. Gump have successfully cast doubt upon this causal relationship.
3. Dr. Patti and Dr. Komaroff, have diagnosed Claimant's current symptoms as chronic fatigue disorder related to her 1989 Hepatitis episode while Dr. Carling, Dr. Matkovic, and Dr. Gump disagree with the chronic fatigue diagnosis and deny the causal relationship. Traditionally, when conflicting expert medical opinions arise, the Department applies the following test to determine which expert's opinion is the most persuasive: 1) the nature of the treatment where a patient-provider relationship has existed; 2) whether the expert had an opportunity to examine all the relevant records; 3) the clarity, thoroughness and objective support underlying the opinion; 4) the comprehensiveness of the evaluation; and 5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (Sept. 17, 2003); *see also S.S. v. The Book Press*, Opinion No. 06-07WC (Feb. 21, 2007). The opinions of Dr. Carling, Dr. Matkovic, and Dr. Gump are the most persuasive. The doctors examined Claimant and her relevant medical records in an effort to determine the cause of her symptoms and the appropriate medical treatment regime for these symptoms; based their opinions on objective support; conducted a thorough examination of the Claimant; and finally, the doctors are all qualified experts in their respective fields.
4. In terms of medical expertise, more weight should be assigned the opinions of Dr. Gump, Dr. Carling, and Dr. Matkovic. Because, at the time Dr. Mark Yorra diagnosed the Claimant with chronic fatigue syndrome, he was a general internist. Therefore, his level of expertise in the field of internal medicine and infectious disease was not comparable to expertise of the other experts. Dr. Carling, further, testified that Dr. Yorra did not follow the standard approach for diagnosing chronic fatigue syndrome because he failed to rule out other possible explanations for Claimant's symptoms. To believe that Claimant's current symptoms are in any way associated with the 1989 Hepatitis episode is medically untenable in light of the aforementioned experts' review of the medical records, their objective diagnoses and their belief that Claimant's eighteen years of symptomatology is without a basis in internal or infectious medicine. Additionally, the Hepatitis episode could have been associated with the Claimant's tattoo and not her employment at the Defendant's because no needle stick was reported in the medical records.

5. Therefore, absent a causal connection between Claimant's symptoms and her 1989 Hepatitis episode, and without evidence the Hepatitis was work-related, there is no basis for holding the Defendant liable for her current medical treatment regime. Establishing the requisite connection requires more than mere possibility, suspicion or surmise. It requires that inferences from the facts asserted must be the most probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941). The most probable hypothesis is that Claimant's symptoms are not casually related to her employment or episode of Hepatitis.
6. Medical treatment may be unreasonable either because it is not medically necessary or because it is not related to the compensable work injury. *See Morrisseau v. State of Vermont, Agency of Transportation*, Opinion No. 19-04 WC (May 17, 2004). In the instant case, the Department does not find Claimant's current symptoms to be work-related.

ORDER:

Based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the Defendant is precluded from any further liability for Claimant's medical treatment regime. The Department finds that Claimant's current medical treatment regime is NOT related to her alleged work injury.

Dated at Montpelier, Vermont this 20th day of August 2007.

Patricia Moulton Powden
Commissioner

APPEAL:

Within in 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.